S.B. Civil Writ Petition No.7523/2007
Mohanlal & Ors.
vs
Jugraj & Anr.

Date of order : 10.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr. GR Punia, for the petitioners.
Mr. Ranjeet Joshi, for the respondents.

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Heard learned counsel for the parties.

A suit for injunction was filed in the year 1986. The plaintiffs annexed map of the property in dispute as well as adjoining properties. The defendants also submitted written statement and annexed the map of the site. The defendants took the plea that in fact, the plaintiffs are not maintaining the building line and come behind the building line. The trial court partly decreed the suit of the plaintiffs substantial holding that the plaintiffs' property in the building line and thereby accepted the plea taken by the defendants that plaintiffs want to shift their plot behind the building line so as to extend their plot in the back side. The suit was decreed by the trial court on 25th April, 2005. The plaintiffs preferred appeal to challenge the judgment and decree of the trial court and submitted an application under Order 41 Rule 27 CPC on 11th May, 2006 and sought permission to produce the copy of the

sale deed of adjoining neighbour Om Prakash with plea that Om Prakash encroached in front side so as to encroached on part of the road and, therefore, the trial court's judgment and decree directing plaintiffs to maintain the building line cannot be sustained.

Learned counsel for the appellant submitted that the document is relevant for the purpose of deciding the appeal and particularly, the issue raised by the defendants themselves, therefore, the appellate court should not have rejected the petitioners'-plaintiffs' -appellants' applications.

I considered the submissions of learned counsel for the petitioners and perused the plaint and written statement as well as the judgment and decree of the trail court alongwith the impugned order dated 24th Oct., 2007.

As per the contention of learned counsel for the petitioners himself that defendants' contention before the trail court itself was that plaintiffs are not maintaining the building line and have shifted their plot behind the building line so as to shift their plot in the back side and, then, all the evidence on this question could have produced by the petitioner in the trial itself. There is no reasonable explanation for not submitting the said

evidence in the trial court or alongwith the first appeal. The first appellate court very carefully considered all the aspects of the matter and, thereafter, rejected the petitioners' application. It is true that in given circumstances, the additional evidence can be permitted by the court to decide the appeal or the issue involved in the appeal by taking on record the additional evidence, but in the facts of this case, no case is made out for interference by this Court under Article 227 of the Constitution of India.

In view of the above reason, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-